

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RAY ALBERT LEWIS,

Movant,

v.

STATE OF WASHINGTON,

Respondent.

NO. CV-09-051-RHW

ORDER OF DISMISSAL

The *pro se* “movant” has filed a Fed. R. Civ. P. 60(b)(4) “Motion For Relief From Judgment” (Ct. Rec. 1) seeking to have this court declare void the sentence imposed on the movant in February 1986, pursuant to his December 1985 King County conviction for aggravated murder. Movant is currently incarcerated at Airway Heights Correctional Center located in the Eastern District of Washington.

There is no bright line rule that every 60(b) motion is to be treated as a second or successive habeas petition. The Ninth Circuit has adopted a moderate approach that proceeds with a case by case examination of the relief sought in the 60(b) motion to determine if it should be treated as a habeas petition. *Hamilton v. Newland*, 374 F.3d 822, 823 (9th Cir. 2004). Here, the 60(b) motion must be treated as a 28 U.S.C. §2254 petition as it asserts a “claim” for relief from a state court sentence. *Gonzalez v. Crosby*, 545 U.S. 524, 531, 125 S.Ct. 2641 (2005). Rule 60(b) may not be used to circumvent the requirement that a successive habeas petition be pre-certified by the court of appeals as falling within an exception to the successive petition bar of 28 U.S.C. §2244(b)(3). *Id.* at 532.

ORDER OF DISMISSAL-

Pursuant to agreement between the Western and Eastern Districts of Washington, all cases in which habeas corpus relief challenging a conviction or sentence is sought shall be processed in the district where the conviction took place regardless of where the prisoner is incarcerated. LR 9.1. Movant's conviction took place in the Western District of Washington and therefore, he must seek habeas relief in that district. This court takes judicial notice of the fact that movant has previously sought and been denied habeas relief in the Western District (CV-03-735-JCC). Accordingly, it will be necessary for movant to seek authorization from the Ninth Circuit Court of Appeals before filing another §2254 petition in the Western District of Washington.

Movant's Motion For Relief From Judgment (Ct. Rec. 1), construed as a §2254 petition, is **DISMISSED without prejudice** to the movant seeking authorization from the Ninth Circuit Court of Appeals to pursue his habeas claim in the Western District of Washington.¹

IT IS SO ORDERED. The District Court Executive is directed to enter this order, provide a copy to the movant, and **CLOSE** this file.
DATED this 25th day of February, 2009.

S/ Robert H. Whaley

ROBERT H. WHALEY
Chief United States District Judge

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¹ This is not the first time the movant has improperly attempted to seek habeas relief without seeking authorization from the Ninth Circuit Court of Appeals, and improperly attempted to seek such relief in the Eastern District of Washington regarding his King County conviction. See CT-00-5026-RHW, "Order Denying Petition" at Ct. Rec. 6; CT-00-5082-EFS, "Order Dismissing Writ" at Ct. Rec. 2.